

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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TIMOTHY CASEY,

Case No. 2:18-cv-00546-EJY

Plaintiff,

v.

**ORDER**

KILOLO KIJAKAZI, Acting Commissioner  
of Social Security,

Defendant.

Before the Court is Counsel's Notice of Motion and Motion for Attorney's Fees Pursuant to 42 U.S.C. § 406(B). ECF No. 40. No response to this motion was filed by Defendant. Therefore, Counsel's Motion is unopposed.

Counsel seeks an award of attorney's fees pursuant to 42 U.S.C. §406(b) in the amount of \$17,874.00. ECF No. 40 at 2. Counsel further asks the Court to order reimbursement to Plaintiff Timothy Casey in the amount of \$4,200.00, an amount already paid in fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. 2412. *Id.* Counsel obtained a decision from the Court remanding Plaintiff's case for payment of benefits, which includes approximately \$71,499.52 in retroactive benefits. The \$17,874.00 in fees requested is for 23.1 hours of work and is 25% of the net payable past due benefits to Plaintiff. Looking to the character of the representation and the results obtained, the fee award is reasonable. *See* 42 U.S.C. § 406(b); *Gisbrecht v. Barnhart*, 535 U.S. 789 (2002). Plaintiff prepared a complaint, briefed a reply, ultimately obtained an award in Plaintiff's favor, and approached this case in a manner that saved time and reduced the accumulation of past due benefits. *Crawford v. Astrue*, 586 F.3d 1142, 1152 (9th Cir. 2009). The Court also notes that Plaintiff agreed to the award of 25% of past due benefits at the outset of this case and has not objected to the pending Motion.

As stated in *Gisbrecht*, "Congress harmonized fees payable by the Government under EAJA with fees payable under § 406(b) out of the claimant's past-due Social Security benefits in this manner: Fee awards may be made under both prescriptions, but the claimant's attorney must

1 'refun[d] to the claimant the amount of the smaller fee.' Act of Aug. 5, 1985, Pub.L. 99-80, § 3, 99  
2 Stat. 186. Thus, an EAJA award offsets an award under Section 406(b), so that the amount of the  
3 total past-due benefits the claimant actually receives will be increased by the ... EAJA award up to  
4 the point the claimant receives 100 percent of the past-due benefits." 535 at 796 (internal citation  
5 and alteration omitted). The Court therefore orders Counsel to reimburse Plaintiff in the amount of  
6 \$4,200.00 of previously paid EAJA fees.

7 Accordingly, IT IS HEREBY ORDERED that Counsel's Notice of Motion and Motion for  
8 Attorney Fees Pursuant to 42 U.S.C. § 406(B) (ECF No. 40) is GRANTED.

9 IT IS FURTHER ORDERED that the Commissioner of Social Security is directed to certify  
10 the fee of \$17,874.00 payable to the Law Offices of Lawrence D. Rohlring.

11 IT IS FURTHER ORDERED that Counsel, through the Law Offices of Lawrence D.  
12 Rohlring, shall refund \$4,200.00 to Plaintiff.

13 Dated this 12th day of January, 2021.

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16 ELAYNA J. YOUCHAK  
17 UNITED STATES MAGISTRATE JUDGE  
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